

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No. 2:20-cv-503-FtM-29NPM

THE ALISTA GROUP, LLC,
MARVIN W COURSON, III,
CHRISTOPHER A KERTATOS, and
LUIS M PINEDA PALACIOS

Defendants.

ORDER

Before the Court is an Application for Clerk's Entry of Default as to Defendant Luis M. Pineda Palacios (Doc. 18). Plaintiff Commodity Futures Trading Commission requests the Court enter a default against Defendant Pineda Palacios. (*Id.*, p. 1). No response was filed to the motion and the response time has lapsed. For the reasons discussed below, the Court grants the motion.

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Before directing the clerk to enter a default, however, the Court must determine whether Plaintiff properly effected service of process, for which Plaintiff bears the burden of proof. Fed. R. Civ. P. 4(*l*); *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-CV-809-FTM-38, 2014 WL 3721209, *1 (M.D. Fla. July

28, 2014); *Zamperla, Inc. v. S.B.F. S.R.L.*, No. 6:13-CV-1811-ORL-37, 2014 WL 1400641, *1 (M.D. Fla. Apr. 10, 2014).

To serve an individual within a judicial district of the United States, Rule 4(e)(2)(B) allows for service by “leaving a copy of [the summons and complaint] at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there.” The process servicer left the summons and complaint for Defendant Pineda Palacios at his residence or usual place of abode with Allen Beard, a person of suitable age and discretion who resides there. (Doc. 14, p. 2). Therefore, service of process was properly effected under Rule 4.

Defendant Luis M. Pineda Palacios was properly served and failed to timely respond to the Complaint (Doc. 1). Therefore, the Court finds a clerk’s default must be entered pursuant to Rule 55(a).

Accordingly, it is hereby **ORDERED** that the Application for Clerk’s Entry of Default (Doc. 15) is **GRANTED** and the Clerk is directed to enter a default against Luis M. Pineda Palacios.

DONE and **ORDERED** in Fort Myers, Florida on October 2, 2020.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE